

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 290 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Santokbai Naranji & ors... .. Appellants

Versus

Arvindkumar Bhawanji Thacker & ors. .. Respondents

Appearance:

MR CH VORA for t he appellants

MR SURESH M.SHAH for respondents Nos.3 and 4.

Respondent No. 1 served.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/05/96

ORAL JUDGEMENT

The present appeal is filed under Order 43, Rule 1 (i) of the Civil Procedure Code challenging the order dated 28th June, 1982 passed by the learned Assistant Judge, Kutch at Bhuj.

The appellants ,who are the original plaintiffs,

filed the suit for redemption of the mortgage and recovery of possession of the mortgaged property wherein it appears that a consent decree was passed against respondent No.1 by filing a compromise pursis at Ex.33. It appears that respondent No.1 filed an appeal being Regular Civil Appeal No.100/81 and challenged the said consent decree. The appellant-plaintiffs in the appellate Court raised an objection about the maintainability of the appeal against the consent decree. It appears that in the said appeal the present respondents Nos.3 and 4 filed an application for being joined as parties on the ground that they are necessary parties in the suit ; that they were also in actual possession of the suit house and that they are the owners of the suit property alongwith their another brother Chandrakant. It is their specific case that respondent No.1 had colluded with the appellants and entered into a compromise even though the house was their ancestral property. In substance, the application was filed by respondents Nos.3 and 4 on the ground that they have got interest in the suit property and in order to avoid multiplicity of the litigation they may be permitted to be joined as parties in the suit, which is pending for final hearing.

The learned Assistant Judge allowed the said application and set aside the preliminary decree passed by the trial Court and the suit was remanded to the trial Court with the direction to implead the present respondents Nos.3 and 4 as parties and to give them an opportunity to file their written statement and then to proceed to dispose of the suit. The learned Appellate Judge also gave a direction that after respondents Nos. 3 and 4 file their written statement, the trial Court would consider whether there should be a denovo trial on all the issues and whether only some of the issues should be retried. As stated above, the appellants have challenged the said order in the present appeal from order.

Now, in the instant case, the learned Appellate Judge has observed that the appellants even though had filed the suit for redemption of mortgage against their own mortgagees, at the same time they were aware that the suit property was not in actual possession of their mortgagees, so in order to recover possession of the suit property, they joined the defendant No.2 (respondent No.1) as a party in the suit alleging that he was in actual possession of the suit property. Since respondents Nos.3 and 4 are also the owners of the suit property and they are in possession of it alongwith

respondent No.1 and their other brother Chandrakant, their claim is not wholly baseless. In the proceedings before the City Survey Officer it was recorded that respondents Nos. 3 and 4 are in joint possession of the suit house with respondent No.1 and their brother Chandrakant. It was further observed in the said proceedings that the possession was for a period of more than 30 years. Thus, all these persons were held to be the occupants and this decision was conveyed on 31-3-1978 and the present suit was filed thereafter meaning thereby that the appellant-plaintiffs very well knew that respondent No.1 is not the only person who is in possession of the suit house but the two sisters and one brother were also claiming ownership right as well as were in possession of the suit property. Under the circumstances, the appellant-plaintiffs ought to have joined the present respondents Nos.3 and 4 as party-defendants. Now, this observation recorded by the learned Appellate Judge cannot be under any circumstances considered to be erroneous warranting this Court to interfere when the matter is remanded to the trial Court, and the question whether there is merit in the claim put forward by respondents Nos.3 and 4 will be decided in the suit but it is too early at this stage to opine that they are not the necessary parties in the suit. It is unfortunate that this appeal has remained pending in this Court since 1982 as by this time the trial Court could have disposed of the suit. In any case, there being no substance in the present appeal, I see no reason to allow this appeal by setting aside the impugned order.

In the result, this appeal fails and is dismissed with no order as to costs. Considering the fact that the impugned order of remand is dated 28th June, 1982, the trial Court shall decide the suit as expeditiously as possible and, in any case, not later than 31st December, 1996.

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